

Introduced by Committee on Elections, Reapportionment and Constitutional Amendments (Hancock (chair), Walters (vice chair), Liu, DeSaulnier, Cogdill)

March 2, 2009

An act to amend Sections 300, 3004, 3100, 3102, 3103, 3103.5, 3104, 3107, 3108, 3109, 3110, and 3112 of the Elections Code, relating to elections.

LEGISLATIVE COUNSEL'S DIGEST

SB 817, as introduced, Committee on Elections, Reapportionment and Constitutional Amendments. Elections: special vote by mail voter.

Existing law authorizes a "vote by mail voter" to cast his or her ballot by mail. Existing law also authorizes members of the Armed Forces, their spouses and dependents; a United States citizen temporarily residing outside the country; and crew members of a United States merchant vessel to cast their votes as "special absentee voters."

This bill would change the term for these voters from "special absentee voters" to "special vote by mail voters."

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 300 of the Elections Code is amended to
- 2 read:
- 3 300. (a) "Vote by mail voter" means any voter casting a ballot
- 4 in any way other than at the polling place.
- 5 (b) "~~Special-absentee~~ *vote by mail voter*" means an elector who
- 6 is any of the following:

1 (1) A member of the Armed Forces of the United States or any
2 auxiliary branch thereof.

3 (2) A citizen of the United States temporarily living outside of
4 the territorial limits of the United States or the District of Columbia.

5 (3) Serving on a merchant vessel documented under the laws
6 of the United States.

7 (4) A spouse or dependent of a member of the Armed Forces
8 or any auxiliary branch thereof.

9 SEC. 2. Section 3004 of the Elections Code is amended to read:

10 3004. The county elections official shall place a notice in any
11 office within the county where applications are taken for federal
12 passports or where military enlistments are received to inform
13 potential special-~~absentee~~ *vote by mail* voters of their right to a
14 vote by mail voter's ballot and where registration materials and
15 application forms can be obtained.

16 SEC. 3. Section 3100 of the Elections Code is amended to read:

17 3100. When a voter who qualifies as a special-~~absentee~~ *vote*
18 *by mail* voter pursuant to subdivision (b) of Section 300 applies
19 for a vote by mail ballot, the application shall be deemed to be an
20 affidavit of registration and an application for permanent vote by
21 mail status, pursuant to Chapter 3 (commencing with Section
22 3200). The application must be completed by the voter and must
23 contain the voter's name, residence address for voting purposes,
24 the address to which the ballot is to be sent, the voter's political
25 party for a primary election, and the voter's signature.

26 If the applicant is not a resident of the county to which he or she
27 has applied, the elections official receiving the application shall
28 forward it immediately to the proper county.

29 SEC. 4. Section 3102 of the Elections Code, as amended by
30 Section 1 of Chapter 252 of the Statutes of 2008, is amended to
31 read:

32 3102. (a) Applications for the ballots of special-~~absentee~~ *vote*
33 *by mail* voters shall be received and, except as provided in Section
34 3103.5, the ballots shall be received and canvassed, at the same
35 time and under the same procedure as vote by mail ballots, insofar
36 as that procedure is not inconsistent with this chapter.

37 (b) This section shall remain in effect only until January 1, 2011,
38 and as of that date is repealed, unless a later enacted statute, that
39 is enacted before January 1, 2011, deletes or extends that date.

1 SEC. 5. Section 3102 of the Elections Code, as amended by
2 Section 2 of Chapter 252 of the Statutes of 2008, is amended to
3 read:

4 3102. (a) Applications for the ballots of special-~~absentee vote~~
5 *by mail* voters shall be received, and the ballots shall be received
6 and canvassed at the same time and under the same procedure as
7 vote by mail ballots, insofar as that procedure is not inconsistent
8 with this chapter.

9 (b) This section shall become operative January 1, 2011.

10 SEC. 6. Section 3103 of the Elections Code, as amended by
11 Section 3 of Chapter 252 of the Statutes of 2008, is amended to
12 read:

13 3103. (a) ~~Any~~*An* application made pursuant to this chapter
14 that is received by the elections official prior to the 60th day before
15 the election shall be kept and processed on or after the 60th day
16 before the election.

17 (b) The elections official shall immediately send the voter a
18 ballot in a form prescribed and provided by the Secretary of State.
19 The elections official shall send with the ballot a list of all
20 candidates who have qualified for the ballot by the 60th day before
21 the election and a list of all measures that are to be submitted to
22 the voters and on which the voter is qualified to vote. The voter
23 shall be entitled to write in the name of any specific candidate
24 seeking nomination or election to any office listed on the ballot.

25 (c) Notwithstanding Section 15341 or any other provision of
26 law, any name written upon a ballot for a particular office pursuant
27 to subdivision (b) shall be counted for the office or nomination,
28 ~~providing if~~ the candidate whose name has been written on the
29 ballot has, as of the date of the election, qualified to have his or
30 her name placed on the ballot for the office, or has qualified as a
31 write-in candidate for the office.

32 (d) Except as provided in Section 3103.5, the elections official
33 shall receive and canvass special-~~absentee vote~~ *by mail* voter ballots
34 described in this section under the same procedure as vote by mail
35 ballots, insofar as that procedure is not inconsistent with this
36 section.

37 (e) ~~In the event that~~*If* a voter executes a special-~~absentee vote~~
38 *by mail* ballot pursuant to this section and an application for a vote
39 by mail ballot pursuant to Section 3101, the elections official shall
40 cancel the voter's permanent vote by mail status, and process the

1 application in accordance with Chapter 1 (commencing with
2 Section 3000).

3 (f) Notwithstanding any other provision of law, a special
4 ~~absentee vote by mail~~ voter who qualifies pursuant to this section
5 may, by facsimile transmission, register to vote and apply for a
6 special ~~absentee vote by mail~~ ballot or a vote by mail ballot. Upon
7 request, the elections official may send to the qualified special
8 ~~absentee vote by mail~~ voter either by mail, facsimile, or electronic
9 transmission the special ~~absentee vote by mail~~ ballot or, if available,
10 a vote by mail ballot pursuant to Chapter 1 (commencing with
11 Section 3000).

12 (g) This section shall remain in effect only until January 1, 2011,
13 and as of that date is repealed, unless a later enacted statute, that
14 is enacted before January 1, 2011, deletes or extends that date.

15 SEC. 7. Section 3103 of the Elections Code, as amended by
16 Section 4 of Chapter 252 of the Statutes of 2008, is amended to
17 read:

18 3103. (a) ~~Any~~ An application made pursuant to this chapter
19 that is received by the elections official prior to the 60th day before
20 the election shall be kept and processed on or after the 60th day
21 before the election.

22 (b) The elections official shall immediately send the voter a
23 ballot in a form prescribed and provided by the Secretary of State.
24 The elections official shall send with the ballot a list of all
25 candidates who have qualified for the ballot by the 60th day before
26 the election and a list of all measures that are to be submitted to
27 the voters and on which the voter is qualified to vote. The voter
28 shall be entitled to write in the name of any specific candidate
29 seeking nomination or election to any office listed on the ballot.

30 (c) Notwithstanding Section 15341 or any other provision of
31 law, any name written upon a ballot for a particular office pursuant
32 to subdivision (b) shall be counted for the office or nomination,
33 ~~providing if~~ the candidate whose name has been written on the
34 ballot has, as of the date of the election, qualified to have his or
35 her name placed on the ballot for the office, or has qualified as a
36 write-in candidate for the office.

37 (d) The elections official shall receive and canvass special
38 ~~absentee vote by mail~~ voter ballots described in this section under
39 the same procedure as vote by mail ballots, insofar as that
40 procedure is not inconsistent with this section.

(e) ~~In the event that~~ *If* a voter executes a special ~~absentee vote~~ *by mail* ballot pursuant to this section and an application for a vote by mail ballot pursuant to Section 3101, the elections official shall reject the voted ballot previously cast, cancel the voter's permanent vote by mail status, and process the application in accordance with Chapter 1 (commencing with Section 3000).

(f) Notwithstanding any other provision of law, a special ~~absentee vote~~ *by mail* voter who qualifies pursuant to this section may, by facsimile transmission, register to vote and apply for a special ~~absentee vote~~ *by mail* ballot or a vote by mail ballot. Upon request, the elections official may send to the qualified special ~~absentee vote~~ *by mail* voter either by mail, facsimile, or electronic transmission the special ~~absentee vote~~ *by mail* ballot or, if available, a vote by mail ballot pursuant to Chapter 1 (commencing with Section 3000).

(g) This section shall become operative January 1, 2011.

SEC. 8. Section 3103.5 of the Elections Code is amended to read:

3103.5. (a) (1) A special ~~absentee vote~~ *by mail* voter who is temporarily living outside of the territorial limits of the United States or the District of Columbia, or is called for military service within the United States on or after the final date to make application for a vote by ~~absent~~ *mail* voter ballot, may return his or her ballot by facsimile transmission. To be counted, the ballot returned by facsimile transmission must be received by the voter's elections official no later than the closing of the polls on election day and must be accompanied by an identification envelope containing all of the information required by Section 3011 and an oath of voter declaration in substantially the following form:

OATH OF VOTER

I, _____, acknowledge that by returning my voted ballot by facsimile transmission I have waived my right to have my ballot kept secret. Nevertheless, I understand that, as with any vote by mail voter, my signature, whether on this oath of voter form or my identification envelope, will be permanently separated from my voted ballot to maintain its secrecy at the outset of the tabulation process and thereafter.

1 My residence address is _____.
2 (Street Address) (City) (ZIP Code)

3
4 My current mailing address is _____.
5 (Street Address) (City) (ZIP Code)

6
7 My e-mail address is _____. My facsimile transmission
8 number is _____.

9
10 I am a resident of _____ County, State of California, and I have not
11 applied, nor intend to apply, for a vote by mail ballot from any other jurisdiction
12 for the same election.

13
14 I declare under penalty of perjury under the laws of the State of California
15 that the foregoing is true and correct.

16
17 Dated this _____ day of _____, 20____.

18
19 (Signature) _____
20 voter (power of attorney cannot be accepted)

21
22 YOUR BALLOT CANNOT BE COUNTED UNLESS YOU SIGN THE
23 ABOVE OATH AND INCLUDE IT WITH YOUR BALLOT AND
24 IDENTIFICATION ENVELOPE, ALL OF WHICH ARE RETURNED
25 BY FACSIMILE TRANSMISSION.

26
27 (2) Notwithstanding the voter's waiver of the right to a secret
28 ballot, each elections official shall adopt appropriate procedures
29 to protect the secrecy of ballots returned by facsimile transmission.

30 (3) Upon receipt of a ballot returned by facsimile transmission,
31 the elections official shall determine the voter's eligibility to vote
32 by comparing the signature on the return information with the
33 signature on the voter's affidavit of registration. The ballot shall
34 be duplicated and all materials preserved according to procedures
35 set forth in this code.

36 (4) Notwithstanding paragraph (1), a special-absentee vote by
37 mail voter who is permitted to return his or her ballot by facsimile
38 transmission is, nonetheless, encouraged to return his or her ballot
39 by mail or in person if possible. A special vote by mail absentee

1 voter should return a ballot by facsimile transmission only if doing
2 so is necessary for the ballot to be received before the close of
3 polls on election day.

4 (b) The Secretary of State shall make a recommendation to the
5 Legislature, no later than December 31, 2008, on the benefits and
6 problems, if any, derived from permitting qualified special-absentee
7 *vote by mail* voters to return their ballots by facsimile transmission,
8 and shall include in the recommendation the number of ballots
9 returned by facsimile transmission pursuant to this section.

10 (c) This section shall remain in effect only until January 1, 2011,
11 and as of that date is repealed, unless a later enacted statute, that
12 is enacted before January 1, 2011, deletes or extends that date.

13 SEC. 9. Section 3104 of the Elections Code is amended to read:

14 3104. ~~Any~~ A vote by mail ballot application by a qualified
15 special-absentee *vote by mail* voter shall also be deemed an affidavit
16 of voter registration and an application for permanent vote by mail
17 status.

18 SEC. 10. Section 3107 of the Elections Code is amended to
19 read:

20 3107. ~~If any a special-absentee~~ *vote by mail* voter is released
21 from service after the closing date of registration for an election
22 and has returned to the county of his or her residence and is not a
23 registered voter, he or she may apply in person to the elections
24 official for permission to register. If the elector furnishes
25 documentary proof of release from service after the closing date
26 of registration for the election, the elections official shall allow
27 him or her to be registered and to vote in the election. On or before
28 the day of election the elections official shall deliver to the precinct
29 board a list of special-absentee *vote by mail* voters registered under
30 this section.

31 SEC. 11. Section 3108 of the Elections Code is amended to
32 read:

33 3108. ~~If any a special-absentee~~ *vote by mail* voter to whom a
34 vote by mail ballot has been mailed and which ballot has not been
35 voted by him or her returns to the county in which he or she is
36 registered on or before election day, he or she may apply for a
37 second vote by mail ballot pursuant to Section 3014. The elections
38 official shall require him or her to sign an authorization to cancel
39 the vote by mail ballot previously issued when it is returned to the
40 county elections official. The elections official shall then issue

1 another vote by mail ballot to the voter, or the elections official
2 shall certify to the precinct board that the voter is eligible to vote
3 in the precinct polling place of his or her residence.

4 SEC. 12. Section 3109 of the Elections Code is amended to
5 read:

6 3109. If ~~any~~ *a special-absentee vote by mail* voter returns to
7 the county of his or her residence after the final day for making
8 application for a vote by mail ballot, he or she may appear before
9 the elections official and make application for registration, vote
10 by mail ballot, or both. The elections official shall register the
11 voter, if he or she is not registered, and deliver to him or her a vote
12 by mail ballot ~~which~~ *that* may be voted in the elections official's
13 office or voted outside the elections official's office on or before
14 the close of the polls on the day of election and returned as are
15 other vote by mail ballots.

16 SEC. 13. Section 3110 of the Elections Code is amended to
17 read:

18 3110. If a special-absentee *vote by mail* voter is unable to appear
19 at his or her polling place because of being recalled to service after
20 the final day for making application for a vote by mail ballot, but
21 before 5 p.m. on the day before the day of election, he or she may
22 appear before the elections official in the county in which the
23 special-absentee *vote by mail* voter is registered or, if within the
24 state, in the county in which he or she is recalled to service and
25 make application for a vote by mail ballot, which may be submitted
26 by facsimile, or by e-mail or online transmission if the elections
27 official makes the transmission option available. The elections
28 official shall deliver to him or her a vote by mail ballot ~~which~~ *that*
29 may be voted in the elections official's office or voted outside the
30 elections official's office on or before the close of the polls on the
31 day of election and returned as are other vote by mail ballots. To
32 be counted, the ballot must be returned to the elections official's
33 office in person, by facsimile transmission, or by an authorized
34 person on or before the close of the polls on the day of the election.
35 If the special-absentee *vote by mail* voter appears in the county in
36 which he or she is recalled to service, rather than the county to
37 which he or she is registered, the elections official shall coordinate
38 with the elections official in the county in which the special
39 absentee *vote by mail* voter is registered to provide the-absentee
40 *vote by mail* ballot that contains the appropriate measures and races

1 for the precinct in which the special-absentee *vote by mail* voter
2 is registered.

3 SEC. 14. Section 3112 of the Elections Code is amended to
4 read:

5 3112. If by any act of Congress ~~which~~ *that* is now or may
6 become effective during the effective period of this section,
7 provision is made for voting by special-absent *vote by mail* voter,
8 that act shall control and be superior to any conflicting provisions
9 of this code, and all state, county, municipal and district officers
10 who are charged with the performance of duties with reference to
11 the election laws of this state shall perform the duties and discharge
12 the obligations placed upon them by that act of Congress. It is the
13 purpose and intent of this section that full effect shall be given to
14 ballots cast by special-absentee *vote by mail* voters under federal
15 statutes in order that no person shall be deprived of his or her vote
16 by virtue of having cast his or her ballot under any federal statute
17 rather than under the laws of this state.